



**The Comptroller General
of the United States**

Washington, D.C. 20548

Ayer

Decision

Matter of: Hardman Joint Venture

File: B-224551

Date: February 13, 1987

DIGEST

1. Protest that pursuant to solicitation provision concerning cost realism contracting agency should have rejected competitor's proposal for unrealistic pricing is denied where provision clearly only contemplated cost realism analysis and adjustment, not proposal rejection.
2. Unsupported allegation that awardee's subcontractors' labor rates included uncompensated overtime hours so that, pursuant to solicitation provision, they arguably should have been adjusted upward for cost realism purposes is insufficient basis to challenge contracting agency's cost realism analysis.
3. Contracting agency can accept an offer with a lower rated technical proposal to take advantage of its lower price, even though cost is the least important evaluation criterion, so long as agency reasonably decides that the cost premium involved in an award to a higher rated, higher priced offeror is not warranted in light of the acceptable level of technical competence available at the lower cost.

DECISION

Hardman Joint Venture (HJV) protests the award of a contract to Logistics Data Research Corporation (LDR) under request for proposals (RFP) No. N00600-86-R-0298, issued by the Department of the Navy for services to maintain and update the HARDMAN program (a project to identify manpower and training requirements for new weapon system acquisitions). The Navy decided that HJV's proposal was not sufficiently superior from a technical standpoint to justify award at its higher proposed price. HJV advances three bases of protest: (1) the Navy should have rejected LDR's proposal because LDR improperly calculated its proposed labor rates using "full-time accounting practices" prohibited by the RFP; (2) LDR's

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prices should have been further adjusted upward to compensate for LDR's subcontractors' use of full-time accounting practices; and (3) the award to LDR was not in accordance with the RFP's evaluation criteria. We deny the protest.

BACKGROUND

The RFP listed the following evaluation criteria in descending order of importance:

1. Technical Plan/Approach
2. Corporate Experience and Quality Control
3. Personnel Resources
4. Contractor Facilities.

The first three criteria comprised the bulk of the technical emphasis. Offerors were advised that the Navy would evaluate proposals using technical and cost tradeoffs in an evaluation method known as greatest value scoring (GVS). Offerors were further advised that the highest rated proposal would not automatically receive the award; the contracting officer would not be bound by point scores but retained discretion to weigh scores against significant differences in technical merit; and the contracting officer's determination could override "the actual technical scores of GVS rating, or the weight of cost factors set forth in the evaluation criteria."

Three firms submitted proposals, and all three were found technically acceptable and included in the competitive range. In this respect, the Navy used a weighted technical factor of 60 percent and a weighted cost factor of 40 percent to calculate each proposal's GVS. The firms subsequently were requested to submit revised technical proposals and, finally, best and final offers (BAFOs). The revised technical evaluation scores were normalized (i.e., converted from a 0-100 scale to a 0-60 scale) for purposes of evaluating them with the BAFO prices (the lowest price received a normalized maximum score of 40) and calculating the GVS scores, as follows:

<u>Raw Technical Score</u>	<u>Normalized Technical Score</u>	<u>Price</u>	<u>Price Score</u>	<u>GVS</u>
THIRD FIRM 98.99	59	\$3,333,552	18	77
HJV 99.38	59	3,004,743	24	83
LDR 85.44	51	2,148,238	40	91

The Navy then reviewed LDR's pricing because the firm's labor rates were considerably lower than those of the other offerors. The Navy learned that LDR's rates were based on a 50 hour work week, while the other offerors' rates were based on a 40 hour work week. Therefore, as a cost realism measure, the Navy adjusted LDR's rates upward to \$2,454,756 by multiplying LDR's stated rates by a factor of 1.25. This adjustment changed the GVS as follows:

<u>Offeror</u>	<u>Price</u>	<u>Price Score</u>	<u>GVS</u>
THIRD FIRM	\$3,333,552	26	85
HJV	2,962,144	32	92
LDR	2,454,756	40	91

Since LDR's and HJV's scores were nearly identical, and LDR's evaluated price was \$507,388 lower than HJV's, the Navy awarded LDR the contract.

COST REALISM

HJV's cost realism arguments involve the interpretation of the following RFP provision, on which the Navy's cost realism adjustment of LDR's offer was based:

"Accounting Practices:

Offerors are required to use standardized or normalized accounting practices when proposing individual. . . labor rates for personnel. Full-time accounting practices which propose individual labor rates that are derived by dividing the salary of the individual by the total hours worked in a salary period will not be accepted. Any rate that is based on full-time accounting and includes uncompensated overtime will be cost realized upward to include such uncompensated overtime."

HJV reads the provision as requiring the rejection of LDR's proposal, which HJV characterizes as being based on "full-time accounting practices," since the provision states that such practices "will not be accepted." HJV argues that there are a number of variations on "full-time accounting practices" and that the RFP provision simply addresses two: the first variation is unacceptable (where labor rates are calculated by dividing salary by total hours worked in the salary period), and the second is acceptable but the offered rates will be adjusted upward. In response, the Navy reports

that the provision was included to discourage offerors from proposing labor rates that did not reflect the offeror's actual rates and which could result in cost overruns, and to ensure that the labor rates presented to the government for evaluation were comparable (i.e., based on the same number of working hours per day in a given salary period). The Navy argues that the second sentence of the provision cannot be read without the third, and that read together they clearly mean that an offer based on a "full-time accounting practice" that does not compensate for overtime (like LDR's) will not be accepted, as is, for evaluation, but will be adjusted upward to compensate for overtime hours.

We find no merit in the protester's argument, since we think HJV's suggestion that the provision is aimed at two separate variations on an accounting approach, one being prohibited and the other not, is untenable. The reason is that there generally would be no basis to object to a labor rate based on salary divided by salary period if the salary period is a normal 40 hours per week; HJV, however, would have an offer with such a labor rate rejected out of hand. Instead, the only arguable basis on which to object to deriving a labor rate that way is if the salary period exceeds 40 hours per week, since dividing the weekly salary by more than 40 hours obviously fails to reflect overtime pay and makes it impossible to judge the labor rate against a 40 hour per week one. Consequently, we think the only reasonable way to read the provision is the way the Navy intended for it to be read, that is, to read the whole provision in context as meaning that an hourly rate that includes uncompensated overtime will not be acceptable on its face, and instead will be adjusted to take the overtime into account.

HJV argues in the alternative that, even if the Navy can apply a cost realism analysis to LDR's proposal instead of rejecting it, the Navy analyzed the proposal incorrectly since no upward adjustment was made to the labor rates of LDR's subcontractors, at least one of which (DDL Omni) HJV believes is also using "full-time accounting practices" with uncompensated overtime. HJV urges that the Navy's omission of LDR's subcontractors from the cost realism analysis has resulted in more than one-half of LDR's price being sheltered from upward adjustment. HJV notes that if the cost realism analysis of LDR's proposal considers subcontractor use of "full-time accounting practices," HJV's GVS score increases and the price differential between the two proposals decreases.

We have held that the analysis of competing cost proposals entails the exercise of informed judgment, and that we will not disturb a cost realism determination unless it is unreasonable. Prospective Computer Analysts, B-203095, Sept. 20, 1982, 82-2 C.P.D. ¶ 234. Furthermore the extent to which proposed costs are examined is a matter of agency discretion. Systematics General Corp., B-214171, Jan. 22, 1985, 85-1 C.P.D. ¶ 73.

The record shows that HJV is correct in its assertion that the Navy did not adjust the labor rates of LDR's subcontractors. However, even assuming a subcontractor's accounting practice should have led to adjustment under the RFP provision, HJV has not furnished evidence supporting its allegation that LDR's subcontractor (DDL Omni) actually bases its labor rates on uncompensated overtime. Consequently, HJV has not met its burden of showing that the Navy's cost realism determination was unreasonable. We note, moreover, that even if the Navy had further adjusted LDR's price upward, and had recomputed HJV's GVS rating, the result, according to our calculations (using the formula in the record), still would have been more than a \$300,000 difference in price and only a four point difference in GVS rating (HJV = 95, LDR = 91).

SOURCE SELECTION

HJV contends that the proposal receiving the highest GVS should have received the award. HJV argues that the Navy abandoned the 60-40 percent approach established for this procurement by allowing the 40 percent factor to control the 60 percent factor; in HJV's view, price can only be the determining factor if the technical scores are close.

HJV cites our decision DLI Engineering Corp., B-218335, June 28, 1985, 85-1 C.P.D. ¶ 724, affirmed, DLI Engineering Corp.--Reconsideration, 65 Comp. Gen. 34 (1985), 85-2 C.P.D. ¶ 468, as supporting its position that award to LDR was improper. In DLI, we held that a contracting agency improperly decided that the cost of a technically superior proposal was too high to warrant its selection over a lower cost, technically inferior proposal, where the evaluation scheme stated that cost was the least important criterion. HJV also cites our decision Applied Financial Analysis, Ltd., B-194388.2, Aug. 10, 1979, 79-2 C.P.D. ¶ 113, for the proposition that where an RFP assigns greater weight to technical criteria than to cost, it is improper to reject a technically superior proposal simply because an inferior proposal offers a better price.

Finally, HJV points to the evaluation panel's favorable remarks concerning the technical merit of its proposal ("Excellent in all areas of Technical Approach") and the favorable remarks concerning LDR's technical proposal ("Technical Approach is very brief and not specific enough in 'How-to-do' tasks"), as well as the fact that the contracting officer never took issue with the technical scores HJV received, as further supporting its position that it should have received the award.

We have recognized that in a negotiated procurement, selection officials have the discretion to make cost/technical tradeoffs and the extent of such tradeoffs is governed only by the tests of rationality and consistency with the announced evaluation criteria. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 C.P.D. ¶ 325. Thus, even if cost is the least important evaluation criterion, an agency properly may award to a lower priced, lower scored offeror if it determines that the cost premium involved in awarding to a higher rated, higher priced offeror is not justified given the acceptable level of technical competence available at the lower cost. AMG Associates, Inc., B-220565, Dec. 16, 1985, 85-2 C.P.D. ¶ 673. The determining element is not the difference in technical merit, per se, but the contracting agency's judgment concerning the significance of that difference. TEK, J.V. Morrison-Knudsen/Harnischfeger (TEK), B-221320, et al., Apr. 15, 1986, 86-1 C.P.D. ¶ 365.

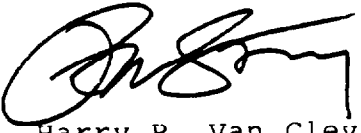
We note that HJV first raised the issue of source selection after it received its copy of the agency report disclosing the GVS scores. Consequently, the Navy has not had an opportunity to address specifically the issue of cost/technical tradeoff. Nevertheless, we find little merit in HJV's arguments.

The RFP stated that the Navy retained discretion to award to other than the highest GVS rated offeror. The RFP did not specifically state that a 60-40 approach would be used in the cost/technical tradeoff, but even if it had, we have held that the use of a 60-40 approach does not deny the agency its discretion to decide whether any technical difference is significant enough to outweigh the cost difference. TEK, B-221320, et al., supra. Moreover, we do not find our DLI decision applicable for two reasons. First, under the instant evaluation, cost carried greater weight (40 percent) than it carried in the DLI evaluation, where cost was one of five factors rated and the other four factors each was worth more than cost. It follows that the result in DLI, based on an evaluation scheme in which price had only minimal importance, is not directly applicable to the present case.

where cost was of much greater importance. Second, in DLI, the proposal we concluded should have been selected was "nearly perfect," while the lower cost one, which the government had chosen, was merely "average." No such marked technical difference exists here. The narrative scores assigned to the four technical categories show that while HJV was excellent in all categories, LDR was rated excellent in two categories, good in one and average in one. Clearly, LDR's proposal was not viewed by the Navy as technically inferior. Therefore, we find that DLI does not preclude the Navy from making the tradeoff made here.

As stated above, selection officials have the discretion to make reasonable judgments about the significance of cost and technical differences. HJV's arguments provide no legal basis for our Office to object to the Navy's judgments in this case.

The protest is denied.


for Harry R. Van Cleve
General Counsel